

**Introduced by Senator Poochigian**

February 16, 2006

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An act to amend Section 56.13 of the Civil Code, to amend Section 123105 of the Health and Safety Code, and to amend Section 4690 of the Probate Code, relating to medical information.

**LEGISLATIVE COUNSEL'S DIGEST**

SB 1307, as introduced, Poochigian. Medical information: confidentiality.

(1) Existing law prohibits the unauthorized disclosure of medical information, except as specified.

This bill would, if consistent with a power of attorney for health care, permit a patient's representative under a power of attorney for health care to further disclose the medical information.

(2) Existing law requires, if a patient's representative requests medical information regarding the patient, a physician or other health care provider to disclose the information to the representative.

This bill would include an agent under a power of attorney for health care within the definition of patient's representative.

(3) Under existing law, an agent under a power of attorney for health care may consult with and obtain information from a person to carry out the agent's duties, as specified. Existing law requires the person to comply with the agent's request.

This bill would permit the agent to consult with and obtain information from other agents acting under a power of attorney regarding the same patient. This bill would permit a covered entity under the federal Health Insurance Portability and Accountability Act to refuse to comply with the agent's request, under certain circumstances.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 56.13 of the Civil Code is amended to  
2     read:  
3     56.13. (a) A recipient of medical information pursuant to an  
4     authorization as provided by this chapter or pursuant to the  
5     provisions of subdivision (c) of Section 56.10 may not further  
6     disclose that medical information except in accordance with a  
7     new authorization that meets the requirements of Section 56.11,  
8     or as specifically required or permitted by other provisions of this  
9     chapter or by law.  
10    (b) *A patient's representative under Section 123105 of the*  
11    *Health and Safety Code may further disclose medical*  
12    *information if:*  
13    (1) *The representative is an agent as defined in Section 4607*  
14    *of the Probate Code.*  
15    (2) *The disclosure is consistent with the authority of the agent*  
16    *under Division 4.7 (commencing with Section 4600) of the*  
17    *Probate Code.*  
18    SEC. 2. Section 123105 of the Health and Safety Code is  
19    amended to read:  
20    123105. As used in this chapter:  
21    (a) "Health care provider" means any of the following:  
22    (1) A health facility licensed pursuant to Chapter 2  
23    (commencing with Section 1250) of Division 2.  
24    (2) A clinic licensed pursuant to Chapter 1 (commencing with  
25    Section 1200) of Division 2.  
26    (3) A home health agency licensed pursuant to Chapter 8  
27    (commencing with Section 1725) of Division 2.  
28    (4) A physician and surgeon licensed pursuant to Chapter 5  
29    (commencing with Section 2000) of Division 2 of the Business  
30    and Professions Code or pursuant to the Osteopathic Act.  
31    (5) A podiatrist licensed pursuant to Article 22 (commencing  
32    with Section 2460) of Chapter 5 of Division 2 of the Business  
33    and Professions Code.

1 (6) A dentist licensed pursuant to Chapter 4 (commencing  
2 with Section 1600) of Division 2 of the Business and Professions  
3 Code.

4 (7) A psychologist licensed pursuant to Chapter 6.6  
5 (commencing with Section 2900) of Division 2 of the Business  
6 and Professions Code.

7 (8) An optometrist licensed pursuant to Chapter 7  
8 (commencing with Section 3000) of Division 2 of the Business  
9 and Professions Code.

10 (9) A chiropractor licensed pursuant to the Chiropractic  
11 Initiative Act.

12 (10) A marriage and family therapist licensed pursuant to  
13 Chapter 13 (commencing with Section 4980) of Division 2 of the  
14 Business and Professions Code.

15 (11) A clinical social worker licensed pursuant to Chapter 14  
16 (commencing with Section 4990) of Division 2 of the Business  
17 and Professions Code.

18 (12) A physical therapist licensed pursuant to Chapter 5.7  
19 (commencing with Section 2600) of Division 2 of the Business  
20 and Professions Code.

21 (b) “Mental health records” means patient records, or discrete  
22 portions thereof, specifically relating to evaluation or treatment  
23 of a mental disorder. “Mental health records” includes, but is not  
24 limited to, all alcohol and drug abuse records.

25 (c) “Patient” means a patient or former patient of a health care  
26 provider.

27 (d) “Patient records” means records in any form or medium  
28 maintained by, or in the custody or control of, a health care  
29 provider relating to the health history, diagnosis, or condition of  
30 a patient, or relating to treatment provided or proposed to be  
31 provided to the patient. “Patient records” includes only records  
32 pertaining to the patient requesting the records or whose  
33 representative requests the records. “Patient records” does not  
34 include information given in confidence to a health care provider  
35 by a person other than another health care provider or the patient,  
36 and that material may be removed from any records prior to  
37 inspection or copying under Section 123110 or 123115. “Patient  
38 records” does not include information contained in aggregate  
39 form, such as indices, registers, or logs.

(e) “Patient’s representative” or “representative” means a parent or the guardian of a minor who is a patient, or the guardian or conservator of the person of an adult patient, *or an agent as defined in Section 4607 of the Probate Code*, or the beneficiary or personal representative of a deceased patient.

(f) “Alcohol and drug abuse records” means patient records, or discrete portions thereof, specifically relating to evaluation and treatment of alcoholism or drug abuse.

SEC. 3. Section 4690 of the Probate Code is amended to read:

4690. (a) If the principal becomes wholly or partially incapacitated, or if there is a question concerning the capacity of the principal, the agent may consult with a person previously designated by the principal for this purpose, and may also consult with and obtain information needed to carry out the agent’s duties from the principal’s spouse, physician, attorney, *agent under a power of attorney subject to Division 4.5 or 4.7 of the Probate Code*, a member of the principal’s family, or other person, including a business entity or government agency, with respect to matters covered by the power of attorney for health care. ~~A person from whom information is requested shall disclose relevant information to the agent. Disclosure under this section is not a waiver of any privilege that may apply to the information disclosed.~~

(b) *Except as set forth in subdivision (c), a person from whom information is requested shall disclose relevant information to the agent. Disclosure under this section is not a waiver of any privilege that may apply to the information disclosed.*

(c) *If a person is a “covered entity” pursuant to Section 160.103 of Title 45 of the Code of Federal Regulations, the covered entity may elect not to treat the agent as the principal’s authorized representative provided that:*

(1) *The covered entity has a reasonable belief that the principal has been or may be subjected to domestic violence, abuse, or neglect by the agent, or treating the agent as the principal’s authorized representative could endanger the principal.*

1     (2) *The covered entity, in the exercise of professional*  
2     *judgment, decides that it is not in the best interest of the principal*  
3     *to treat the agent as the principal's authorized representative.*

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